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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

MANUEL GAMBOA,

Plaintiff, Cross-defendant and
Respondent,

v.

G&D CASE STREET, LLC et al.,

Defendants, Cross-complainants and
Appellants.

D073541

(Super. Ct. No.
37-2017-00003835-CU-OR-CTL)

APPEAL from a postjudgment order of the Superior Court of San Diego County,
Eddie G. Sturgeon, Judge. Affirmed.

Law Office of Johanna S. Schiavoni and Johanna S. Schiavoni; The Cabrera Firm
and Guillermo Cabrera for Defendants, Cross-complainants and Appellants G&D Case
Street, LLC, David Mendez and George Mendez.

Niddrie Addams Fuller Singh and John S. Addams for Plaintiff, Cross-defendant
and Respondent.

After resolving disputes over ownership of a piece of commercial real property, defendants and appellants G&D Case Street, LLC (Case Street) and its owners, David Mendez and George Mendez, entered into a settlement agreement and mutual release with plaintiff and respondent Manuel Gamboa. The court later entered an order determining that Gamboa owned certain construction equipment stored on the property. Characterizing that order as an appealable order following a judgment enforcing a settlement agreement under Code of Civil Procedure¹ section 664.6, defendants contend the trial court erred legally and factually in entering it. They maintain the order assigning ownership of the construction equipment must be reversed on grounds (1) the court lacked legal authority to construct a new settlement term outside the scope of their previous settlement; (2) the order is not supported by substantial evidence that Gamboa owns the construction equipment; and (3) the sole evidence in the record supports a finding that defendants own the equipment.

We reject these contentions, and affirm the order.

¹ Statutory references are to the Code of Civil Procedure unless otherwise specified.

FACTUAL AND PROCEDURAL BACKGROUND²

Following a foreclosure sale that occurred in or around 2014, Case Street became the record owner of commercial property located in La Mesa California (the property). Gamboa and his family members had previously owned the property, and after the sale, Gamboa continued to occupy it. Gamboa dealt with tenants, made mortgage and property tax payments, and paid for repairs, improvements, and accountants.

After disputes arose between Gamboa and the Mendezes over the property's ownership, Gamboa sued defendants for breach of contract and other causes of action, seeking injunctive relief as well as damages for the Mendezes' wrongful assertion of ownership and for depriving him of the property's use. Case Street answered the complaint. It also filed a cross-complaint seeking an accounting and damages for conversion.

The Mendezes separately answered and cross-complained against Gamboa. In addition to an accounting and damages for conversion, they alleged causes of action for breach of fiduciary duty and negligence arising from Gamboa's management of a potential business venture: selling sand excavated from his family's golf course to third parties. The Mendezes alleged that the parties had incorporated a new entity, G&D Materials, LLC, for that venture, into which the Mendezes had initially invested \$200,000. They alleged that rather than lease construction equipment for that venture,

² We take some of the background facts from verified pleadings and other declarations that were before the lower court when it made its ruling that is the subject of this appeal, stating them in the light most favorable to Gamboa, who prevailed below. (Accord, *Sahlolbei v. Providence Healthcare, Inc.* (2003) 112 Cal.App.4th 1137, 1145.)

Gamboa unilaterally purchased \$800,000 worth of equipment on the company's behalf, requiring the Mendezes to personally guarantee its financing, and also purchased equipment contrary to the Mendezes' instructions. They alleged: "By January 2016, the revenue from the venture did not meet the expectations made and G&D Materials had lost significant sums. At that time, [Gamboa] informed [the Mendezes] that he was attempting to sell the equipment and [the Mendezes] began sending potential buyers to view the equipment. On information and belief, [the Mendezes] later learned [Gamboa] was actually turning away potential buyers saying that he was the owner and the equipment was not for sale. [¶] In total, [the Mendezes] invested approximately \$1.2 million in the G&D Materials venture. To date, they have received nothing as a result of their investment and no information concerning the status of their investment or why the project was unsuccessful, if that is the case." The Mendezes alleged Gamboa breached his fiduciary duty and lost \$1.2 million of the Mendezes' investments in the venture. They sought actual, statutory and exemplary damages, an accounting and turnover of monies acquired by Gamboa that were either from or owed to Case Street, costs and attorney fees, and other relief the court deemed proper.

At a hearing the following month, the court advised counsel it was contemplating exercising its discretion to appoint a receiver while the parties continued to litigate the matter. Following a short break in the proceeding, counsel for defendants advised the court the parties had reached a settlement that they wished to place on the record "for purposes of enforcement pursuant to . . . section 664.6." The court initially asked counsel to give it "the broadest outline" of their agreement. Defendants' counsel stated: "The

broadest outline is we've agreed to a purchase price from Mr. Gamboa by buying it from G&D. There will be a period of time where Mr. Gamboa has to perform. If he doesn't perform, the property will stay with G&D. And there will be a global settlement of all matters between the parties." The court put David Mendez on the phone, and with the other parties and counsel present, defendants' counsel read the settlement terms: "Mr. Gamboa will pay \$2,760,000 to G&D Case Street for purchase of the subject property [¶] . . . [¶] . . . There will be a \$100,000 deposit that is nonrefundable if they do not close that is nonrefundable to G&D Case Street. The escrow must close within 45 days. [¶] . . . [¶] . . . If the property does not close within 45 days, Mr. Gamboa will release all claims to the property. The parties as part of their settlement will agree to general releases amongst all of the parties—amongst and between all of the prior parties. And so it will be a settlement of all litigation between them. I believe that is all."

The court inquired about a \$1.4 million lien on the property, which counsel explained would be paid off through the sale proceeds. It also inquired about issues involving past rents, which Gamboa's counsel confirmed would be waived by each side. One of Gamboa's two attorneys then said: "The only thing I was going to add to [defendants' counsel's recitation], which we agree with, is that this is a full waiver, a [Civil Code section 1542 waiver], a mutual release of all claims."³

³ The transcript contains a typographical error at this point, showing Gamboa's counsel referred to a "full waiver, a 5042 *[sic]*, a mutual release of all claims." At the time of the parties' settlement, Civil Code section 1542 provided: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her

"The Court: Everything?

"[Gamboa's second attorney]: Absolutely everything between every party.

"[Defendants' counsel]: Everything."

The court asked counsel to explain what section 664.6 meant, and defendants' counsel responded for the parties' benefit: ". . . [section] 664 means that if somebody does not fulfill the obligations of the settlement, we can come into Court, and the Court can enforce it." The court inquired about escrow fees, and the parties confirmed they would split them equally. When asked whether they wished to add anything, both counsel responded they did not. The court remarked: "I'm going to have each counsel inquire. This is really important. I'm satisfied everybody is here, because I'm looking you in the eye and telling you this. So this is it. If you've got any second doubts or anything, now is the time to say, 'whoa, slow down.' But this is it. Because you are not going to come back in a week and say, 'You know, Judge, I rethought about this. And I don't want to do it. [¶] No. I can't say it any stronger. No. You'd have to bring a motion before me. And since I'm the one here listening to it and looking you both in the eye, I'm clear that you know what you are doing."

The court then instructed counsel to inquire of their respective clients whether they understood the settlement terms. Gamboa's counsel stated: "Do you understand that within 45 days, you are to close escrow pursuant to the terms that we've discussed, the global settlement, the payment of \$2,760,000; that your \$100,000 deposit is

favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

nonrefundable; and that there will be a release of all claims—any and all claims against all parties; that include any disputed relationships that any of you had with each other?" Gamboa responded, "Yes." Defendants' counsel asked both George and David Mendez whether they understood those terms, and whether they had agreed to them and the release of all claims on behalf of themselves personally as well as Case Street, and G&D Materials, LLC.⁴ Both Mendezes stated they understood.

Days before the August 4, 2017 close of escrow, Case Street applied ex parte "to enforce the settlement." Characterizing the construction equipment as belonging to G&D Materials, LLC, it asked the court to direct Gamboa to allow G&D Materials, LLC to secure the construction equipment and remove it from the property. At the hearing on the matter, Gamboa's counsel asserted that some of the construction equipment was jointly owned and pointed out it had been the subject of a cross-complaint. He advised the court that he understood everything would be dropped as a result of the settlement, including claims pertaining to the construction equipment, and that Gamboa wanted it. Gamboa's counsel asked for an extension on the property closing. Counsel specially appearing for the defendants asserted that the settlement transcript did not reflect anything about the personal property, which his clients were prevented from retrieving. The court told the

⁴ Counsel asked George Mendez whether he understood "that you are settling all matters and any claims that you could potentially have even if you don't know about them between the parties?" He asked David Mendez: "And do you understand that this is a global settlement between all of the parties; that you're releasing all claims between everybody?"

parties to move all of the equipment off the property and it would retain jurisdiction to decide its ownership:

"The Court: . . . All of those trucks, the equipment, you've read it, it was in the moving papers . . . rent a yard or find a yard, move it all off the property. I'll decide later who owns it. Got it?"

"[Plaintiff's counsel]: Okay.

"The Court: Get rid of it. I want that property clean. I want this sale to go through. [¶] . . . [¶]

"[Defendants' counsel]: And this would just amend the settlement to pull out his piece?

"The Court: And I will decide who owns the trucks and that will not take me long.

"[Defendants' counsel]: And the Court will retain jurisdiction?"

"The Court: Absolutely."

The court extended the closing deadline for the real property sales transaction by 30 days, reiterating it was "retain[ing] jurisdiction over who gets the equipment, the trucks, the loaders, et cetera."

In September 2017, defendants sought another ex parte order to compel the settlement's enforcement, complaining that Gamboa was not prepared to close escrow by the court's new deadline. After hearing from the parties and others involved in the sale, the court granted an additional 11 days to close escrow. It ordered the parties to cooperate with the escrow company and retained jurisdiction over the matter.

In October 2017, defendants moved for an order to release the construction equipment to them. Pointing out that Gamboa had completed the sale of the real property as contemplated by the settlement, they argued the equipment was the "sole remaining issue between the parties"; G&D Materials, LLC or the Mendezes had paid for the equipment, the majority of which remained stored at the property; and Gamboa refused to allow them to remove it. According to the defendants, "[t]he one thing that was not a term of settlement between the parties was that title to this equipment would change in any way. As such, the ownership of the equipment remains what it was at the time of purchase—G&D Materials." They argued that "[n]othing in the settlement between the parties transferred ownership of this equipment to Mr. Gamboa" Defendants submitted a declaration from David Mendez in support of the motion, but he did not address the circumstances surrounding the settlement agreement or his understanding of its scope. Defendants asked the court to direct Gamboa to allow them to remove the equipment.

Gamboa did not file an opposition, but one day before the hearing submitted a declaration asserting that the settlement encompassed all claims, including those asserted in the Mendezes' cross-complaint related to their costs incurred for the purchase of the construction equipment. He averred, "In accordance with the terms of the Settlement, this Declarant agreed to pay to the Defendants the total sum of nearly \$2,800,000. That amount reflected the pay-off of the existing Case Street mortgage, (\$1,600,000), and nearly \$1,200,000 to reimburse Defendants for the claimed losses and financing of the equipment. [¶] . . . [¶] . . . While silent as to the manner in which the settlement dollars

were to be allocated, it was certainly understood and agreed to by all of the parties during their negotiations that the additional \$1,200,000 was to satisfy the outstanding loans on the equipment, and that the same would belong to this Declarant. This Declarant uses equipment of this type in his business activities, whereas Defendants have no use for any of it and simply wish to deprive Plaintiff and potentially interfere with his present financing."

The court heard argument on the matter, confirming the parties' settlement had not been reduced to writing. It directed the parties to provide it a joint list of the equipment and took the matter under submission.

On November 6, 2017, the court issued an order finding Gamboa was the owner of the construction equipment. Defendants then moved to reduce the settlement to a judgment pursuant to section 664.6 so as to appeal the court's order regarding the construction equipment as an order after judgment. In early January 2018, defendants filed a notice of appeal of the November 2017 construction equipment order, characterizing it as an order after judgment entered pursuant to section 664.6. Several days later, the court heard defendants' motion for judgment and took in the parties' respective proposed judgments.

In February 2018, the court accepted the defendants' proposed judgment pursuant to section 664.6, and entered it nunc pro tunc to September 14, 2017. The judgment provides:

"Based on the noticed Motion for Judgment Pursuant to Settlement and the Settlement between the parties entered into on June 19, 2017, the Court enters judgment pursuant to California Code of Civil Procedure section 664.6 as follows:

"1. Mr. Gamboa pays G&D Case Street, LLC \$2,760,000.00 for the purchase of . . . the 'Subject Property[.]'

"2. Mr. Gamboa would deposit \$100,000.00 in escrow and the deposit was non-refundable.

"3. Escrow must close by September 20, 2017.

"4. Should Mr. Gamboa fail to close escrow by September 20, 2017, Mr. Gamboa released all claims to the property.

"5. As part of the agreement, there would be a mutual release of all claims between the parties including a Code of Civil Procedure [*sic*] section 1542 waiver.

"6. The Parties shall bear their own attorneys' fees and costs.

"IT IS FURTHER ORDERED, that the Court has severed and reserved for its determination pursuant to an order after judgment the decision as to the question of ownership of certain equipment that was on the Subject Property prior to the close of escrow pursuant to the terms of the settlement between the parties and this judgment. [¶] The Court retains jurisdiction to enforce the settlement and its terms."

DISCUSSION

I. *Appealability*

Characterizing the judgment as appealable because it enforces a settlement agreement under section 664.6, defendants characterize the court's equipment order as an

appealable postjudgment order under section 904.1, subdivision (a)(2). Gamboa questions whether the court's November 2017 equipment order is appealable as a postjudgment order, suggesting the February 2018 judgment was not final but interlocutory because it left the equipment dispute open for later determination. However, because he believes a decision on the issues now will serve judicial economy and the parties' interests, Gamboa does not contest this court's jurisdiction. He suggests we may treat the appeal as a writ petition.

We must resolve the issue, which implicates our fundamental jurisdiction. (See *Jennings v. Marralle* (1994) 8 Cal.4th 121, 126 [An appealable judgment or order is a jurisdictional prerequisite to an appeal].) An order made after an appealable judgment is itself appealable, as long as (1) the issues raised by the postjudgment order are different from those arising from an appeal from the judgment; (2) the order either affects the judgment or relates to it by enforcing it or staying its execution; (3) the underlying judgment must be final; and (4) the challenged order must be a final determination of the parties' rights and not be appealable as part of later proceedings. (*Finance Holding Co. LLC v. The American Institute of Certified Tax Coaches, Inc.* (2018) 29 Cal.App.5th 663, 674, citing *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 651 & fn. 3, 652-656; see § 904.1, subd. (a)(2).) We are not persuaded that the February 2018 judgment entered nunc pro tunc as of September 2017 is interlocutory, particularly when the issue it reserved had already been determined as of November 2017, leaving nothing further to be decided by the court.

We conclude the November 2017 order determining ownership of the construction equipment is an appealable postjudgment order. The order finally determined the parties' rights in that property and enforced the nunc pro tunc judgment, which in turn was entered so as to enforce the parties' settlement. (See *Viejo Bancorp, Inc. v. Wood* (1989) 217 Cal.App.3d 200, 205 [judgment enforcing a settlement agreement pursuant to section 664.6 is appealable under section 904.1, subdivision (a), "[s]ince the intended substance and effect of the judgment is to finally dispose of the . . . action . . ."]; *Critzer v. Enos* (2010) 187 Cal.App.4th 1242, 1252.)

II. *Equipment Ownership Order*

A. *Standard of Review*

The parties both characterize the trial court's ruling as one on a section 664.6 motion for entry of judgment enforcing a settlement agreement. They argue its decision is reviewed for substantial evidence. We agree. Our inquiry is whether substantial evidence supports the court's factual findings on such a motion, including the fact of whether the parties had a meeting of the minds regarding settlement. (*In re Marriage of Assemi* (1994) 7 Cal.4th 896, 911; *J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 984; *Critzer v. Enos, supra*, 187 Cal.App.4th at p. 1253; *Osumi v. Sutton* (2007) 151 Cal.App.4th 1355, 1360.) Where the court's ruling presents issues of law, this court conducts an independent review. (*J.B.B.*, at p. 984.)

Under the substantial evidence standard, our review "begins and ends with a determination as to whether there is any substantial evidence in the record, contradicted or uncontradicted, that will support the finding." (*Associated Builders and Contractors,*

Inc. v. San Francisco Airports Com. (1999) 21 Cal.4th 352, 374; *Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.) " 'Substantial evidence' is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value." (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) We do not reweigh the evidence or evaluate the credibility of witnesses, but rather defer to the trier of fact. (*Colombo v. BRP US Inc.* (2014) 230 Cal.App.4th 1442, 1451.) "When two or more inferences can be reasonably deduced from those facts, the reviewing court has no power to substitute its deductions for those of the fact finder." (*Associated Builders*, at p. 374.) "Consistent with the venerable substantial evidence standard of review, and with our policy favoring settlements, we resolve all evidentiary conflicts and draw all reasonable inferences to support the trial court's findings that these parties entered into an enforceable settlement agreement and its order enforcing that agreement." (*Osumi v. Sutton*, *supra*, 151 Cal.App.4th at p. 1360.)

B. *Section 664.6*

Section 664.6 states in part: "If parties to pending litigation stipulate . . . orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement." (§ 664.6.) The statute provides a summary procedure in this way to enforce the parties' settlement agreement. (*Leeman v. Adams Extract & Spice, LLC* (2015) 236 Cal.App.4th 1367, 1373-1374; *Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1182.) The statute permits the court to retain jurisdiction over the parties for this purpose until they have fully performed the settlement terms.

(§ 664.6.) This reservation of jurisdiction "simply grants *the parties* a streamlined procedure to enforce an agreement they made between themselves." (*Hernandez v. Board of Education* (2004) 126 Cal.App.4th 1161, 1175.)

"A settlement agreement is interpreted according to the same principles as any other written agreement. [Citation.] It must be interpreted to give effect to the mutual intent of the parties as it existed at the time, insofar as that intent can be ascertained and is lawful. [Citations.] If the language of the agreement is clear and explicit and does not involve an absurdity, determination of the mutual intent of the parties and interpretation of the contract is to be based on the language of the agreement alone." (*Leeman v. Adams Extract & Spice, LLC, supra*, 236 Cal.App.4th at p. 1374.)

In view of these principles, the power of the trial court under section 664.6 "is extremely limited." (*Hernandez v. Board of Education, supra*, 126 Cal.App.4th at p. 1176.) " 'Although a judge hearing a section 664.6 motion may receive evidence, determine disputed facts, and enter the terms of a settlement agreement as a judgment [citations], nothing in section 664.6 authorizes a judge to *create* the material terms of a settlement, as opposed to deciding what terms *the parties themselves* have previously agreed upon.' " (*Ibid.*) Because a settlement agreement is simply a contract, "[t]he court is powerless to impose on the parties more restrictive or less restrictive or different terms than those contained in their settlement agreement" (*Ibid.*) "Neither this court nor the superior court can rewrite the oral settlement agreement or add what was omitted." (*Canaan Taiwanese Christian Church v. All World Mission Ministries* (2012) 211 Cal.App.4th 1115, 1126.)

C. Claim that Ownership Issue was Severed from the Parties' Mutual Release and Waiver of Civil Code section 1542

Defendants acknowledge that their settlement agreement contained a mutual release of all claims as well as a waiver of the protections of Civil Code section 1542 relating to unknown claims. However, they maintain that like the parties did in *Winet v. Price* (1992) 4 Cal.App.4th 1159, the parties here "orally amended" the Civil Code section 1542 waiver during the August 2017 hearing to preserve the claim of the construction equipment's ownership so that it would be determined by the court "separate and apart" from the settlement regarding the real property transaction. Defendants suggest the trial court made a factual finding that the parties mutually agreed the terms of their settlement did not include the construction equipment issue, and argue substantial evidence supports such a finding. According to defendants, the court's judgment reflects this determination.

We do not read the record or the judgment in this way. First, there is no trial court finding that any issue was excepted from the parties' settlement agreement and mutual release or their Civil Code section 1542 waiver. The court was not asked to make, and did not make, any factual findings in ruling on defendants' motion. Contrary to defendants' assertion otherwise, under settled principles of appellate review, we are entitled to apply the doctrine of implied findings and presume that the court made all factual findings necessary to support its decision so long as substantial evidence supports such findings. (*Fair v. Bakhtiari* (2011) 195 Cal.App.4th 1135, 1138 [absence of a statement of decision in connection with an order on a motion does not affect the

standard of review, under which we presume the court's order is supported by the record and uphold all implied findings of fact supported by substantial evidence]; see also *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [under basic appellate rule of presumption of correctness, the reviewing court indulges all intendments and presumptions in support of the trial court's order].)

Substantial evidence supports an implicit finding concerning the scope of the parties' settlement agreement and release as encompassing all disputes between the parties, including the construction equipment ownership dispute referenced in the Mendezes' cross-complaint against Gamboa.⁵ The judgment provides that the court "severed and reserved for its determination pursuant to an order after judgment the decision as to the question of ownership of certain equipment that was on the Subject Property prior to the close of escrow *pursuant to the terms of the settlement between the parties and this judgment.*" (Emphasis added.) It then says immediately after that statement that the court "retains jurisdiction to enforce the settlement and its terms." The judgment says nothing about excluding the construction equipment ownership issue (or any other dispute) from the parties' settlement agreement and general release or their

⁵ The sole extrinsic evidence on the issue is Gamboa's declaration in which he claimed the settlement terms included money to reimburse the defendants for their claimed losses and financing of the construction equipment, and that the settlement encompassed all claims asserted in the cross-complaint for that compensation. But a court may not consider extrinsic evidence of prior or contemporaneous oral agreements to vary or contradict a clear and unambiguous contract. (*Brown v. Goldstein* (2019) 34 Cal.App.5th 418, 432; accord, *Winet v. Price, supra*, 4 Cal.4th at pp. 1165-1167.) We consider the parties' settlement agreement and mutual general release plain and unambiguous, and designed to extinguish all claims among them.

Civil Code section 1542 waiver; it indicates only that the court would enforce the parties' settlement agreement as to that question via a postjudgment order. As we view it, this entailed a matter of deciding the factual question concerning the scope of the parties' agreement, including the parties' Civil Code section 1542 waiver. (Accord, *Butler v. Vons Companies, Inc.* (2006) 140 Cal.App.4th 943, 949 [scope of release and Civil Code section 1542 waiver was a question of fact].)

The record is consistent with this conclusion. The transcript of the August 2017 hearing on defendants' first application to enforce the settlement agreement does not reflect a mutual agreement of the parties to sever the construction ownership issue from their release or the Civil Code section 1542 waiver. Any such agreement to a new term of the parties' settlement would have had to be orally agreed to *by the parties themselves* in the court's presence. (§ 664.6; *Levy v. Superior Court* (1995) 10 Cal.4th 578, 586 [term "parties" as used in section 664.6 "means the litigants themselves, and does not include their attorneys of record"]; *Critzer v. Enos, supra*, 187 Cal.App.4th at p. 1257.) The record does not indicate that either David or George Mendez appeared at the hearing, only counsel specially appearing for them. In any event, neither Gamboa nor his counsel assented to defendants' counsel's remark about the court's handling of the construction equipment issue as "just amend[ing] the settlement to pull out this piece." Absent an agreement of the parties, there was no enforceable change to the settlement placed on the record in June 2017, which contained mutual general releases and an unambiguous waiver of the protections of Civil Code section 1542 for claims the parties "do[] not know

or suspect to exist in his or her favor at the time of executing the release" (Civ. Code, § 1542.)

The circumstances are unlike those in *Winet v. Price*, *supra*, 4 Cal.App.4th at 1159 where the parties (attorney and client) "did specifically except" from their general release "any claims connected with 'any act or omission committed or omitted relating to' " a limited partnership. (*Id.* at p. 1164.) Addressing the client's later claim that their release did not include malpractice claims against the attorney, and reviewing the circumstances surrounding the making of their agreement (rejecting the client's effort to introduce parol evidence as to his uncommunicated subjective intent), this court held the parties intended their release to encompass *all* known and unknown claims. (*Id.* at pp. 1166-1167.) *Winet* pointed out the significance of the fact the client was represented by counsel, aware of possible malpractice claims against the attorney, and still waived Civil Code section 1542, expressly assuming the risk of unknown claims. (*Id.* at p. 1168.) It was deemed "significant that the parties were able to, and did, fashion language memorializing their agreement to preserve identified claims from the operation of the release when such was their intention" (*Ibid.*) Unlike *Winet*, there is no indication here that the parties carved out any issue or dispute from their settlement agreement and release of all claims between them.

D. The Court's Decision Regarding Ownership of the Construction Equipment Was a Matter of Interpreting the Scope of the Parties' Civil Code Section 1542 Waiver

We turn to defendants' challenges to the order assigning the construction equipment's ownership to Gamboa. Claiming that "the grounds for the order are

unclear," they first argue the court impermissibly inserted a new term into their settlement agreement, that is, that the mutual release encompassed the dispute over the equipment's ownership. Second, they argue the court's order is unsupported by substantial evidence that Gamboa owns the equipment. Both arguments, however, are premised on the notion that the parties had amended their settlement agreement to exempt the equipment ownership issue from the scope of their release, a contention we have rejected above. The arguments therefore fall in part on their premise.

Setting that deficiency aside, we find no merit to the argument that the court injected a new settlement term by its order. Rather, the court simply enforced the mutual releases and the parties' waiver of the protections of Civil Code section 1542. "[A] general release can be completely enforceable and act as a complete bar to all claims (known or unknown at the time of the release) despite protestations by one of the parties that he did not intend to release certain types of claims." (*San Diego Hospice v. County of San Diego* (1995) 31 Cal.App.4th 1048, 1053; *Winet v. Price, supra*, 4 Cal.App.4th at p. 1173.) Here, all parties were represented by counsel when they placed their settlement agreement on the record, and both counsel acknowledged that the agreement included the Civil Code section 1542 waiver so as to resolve "[a]bsolutely everything between every party." This included the claims made by the Mendezes in their cross-complaint concerning their asserted purchase of the construction equipment and loss of \$1.2 million in investment monies, and their specific allegation in that pleading that Gamboa prevented them from selling it, claiming he owned the equipment. The Mendezes were apparently aware of Gamboa's claim of ownership at the time, but there was no indication

during the hearing that the parties sought to exclude or reserve disputes related to the construction equipment from their settlement. Each attorney described the settlement as "global."

Under these circumstances, the parties' general release and Civil Code section 1542 waiver is enforceable as to the construction equipment dispute. (See *Belasco v. Wells* (2015) 234 Cal.App.4th 409, 421-422 [release of "any and all claims" and Civil Code section 1542 waiver are enforceable if reasonable, e.g., where the agreement was explicit and made with advice of counsel; general release given under these circumstances can be completely enforceable and act as complete bar to all claims, known or unknown at time of release, " 'despite protestations by one of the parties that he did not intend to release certain types of claims' "]; *Salehi v. Surfside III Condominium Owners' Assn.* (2011) 200 Cal.App.4th 1146, 1160; *San Diego Hospice v. County of San Diego, supra*, 31 Cal.App.4th at p. 1053; *Winet v. Price, supra*, 4 Cal.App.4th at pp. 1167-1168, 1173 [party represented by counsel and aware of possible malpractice claims against attorney at the time he entered into a general release and waiver of Civil Code section 1542, and with knowledge and advice of counsel, party expressly assumed the risk of unknown claims; "Under these circumstances we may not give credence to a claim that a party did not intend clear and direct language to be effective"].) " 'In the absence of evidence to the contrary, we presume that counsel explained to [the parties] "the import of the release in general and of the waiver of [Civil Code] section 1542 in particular." ' ' " (*Belasco*, at p. 422, quoting *Salehi*, at p. 1160; see *Winet v. Price*, at p. 1168.)

Defendants seek to compare the circumstances here to those in *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793 and *White Point Co. v. Herrington* (1968) 268 Cal.App.2d 458. In both cases, parties unsuccessfully attempted to reach agreements—in *Weddington*, a licensing agreement and settlement agreement (*Weddington*, at pp. 806-807), and in *White Point*, a real property sales agreement (*White Point*, at pp. 462-463)—and the appellate courts reversed lower court judgments improperly specifically enforcing terms to which the parties had not agreed. (*Weddington*, at pp. 817-818; *White Point*, at p. 468.) Here, the parties did not fail to agree upon a material term of the contract; they unambiguously agreed to a general release of all claims among themselves without exception along with a Civil Code section 1542 waiver as to unknown claims. *Weddington* and *White Point* are inapposite.

Finally, we reject defendants' contention that the court's order is unsupported by substantial evidence of Gamboa's ownership of the equipment. They repeat their unmeritorious assertion concerning the court's finding, arguing that Gamboa's claim to the construction equipment "is directly contrary to the trial court's finding in the final judgment that the parties mutually agreed to *sever* the equipment ownership dispute from the settlement agreement's mutual release of claims." Defendants seek to apply principles, applied mainly in the summary judgment context, barring consideration of a party's declaration that contradicts a prior discovery response. Those principles have no application to the substantial evidence standard of review governing these circumstances described above, which requires us to accept all evidence of credible and of solid value supporting the court's implied findings, and disregard contrary evidence. The question

here is whether the scope of the parties' settlement and mutual releases encompassed the construction equipment ownership dispute; we have already held substantial evidence supports the trial court's finding that it did. Thus, we uphold the court's postjudgment order enforcing the parties' settlement and awarding Gamboa ownership of the construction equipment at issue.

DISPOSITION

The postjudgment order is affirmed.

O'ROURKE, Acting P. J.

WE CONCUR:

IRION, J.

GUERRERO, J.